Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

JOHN WILLIAM MOODY - PETITIONER

V.

UNITED STATES OF AMERICA - RESPONDENT

On Petition for Writ of Certiorari
UNITED STATES COURT OF APPEALS
11TH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

"S/ JOHN WILLIAM MOODY"
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QUESTIONS PRESENTED

On the basis of court records and evidence filed in the case at bar what legal grounds does the United States Supreme Court find for dismissal of Moody's lawsuit against United States of America?

On the basis of court records and evidence filed in the case at bar what legal grounds does the United States Supreme Court find for District Court's failure to grant Moody's Motion for Summary Final Judgment, with affidavits, to be granted as a matter of law?

When a court of competent jurisdiction, sitting as a court of appeals, finds a reversible error in the case being reviewed what legal grounds exist which permit the judge to disregard the findings of the court and deny the appeal based on his own opinion?

LIST OF PARTIES

The names of all parties to this action appear in the caption of the case on the cover page.

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Appendix B	Court Order of U.S. District Court, Middle District of Florida, Jacksonville Division dated February 10, 2003
Appendix C	Court Order of U.S. Court of Appeals, 11th Circuit, Denying petition for rehearing en banc dated Dec. 29, 2003
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Appendix A-1	Definition: Res Judicata

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix "A" to the petition and is unpublished.

The opinion of the United States District Court appears at Appendix "B" to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was September 8, 2003.

A timely petition for rehearing was denied by United States Court of Appeals on December 29, 2003 and a copy of the order denying rehearing appears at Appendix "C".

A motion for stay of mandate was timely filed in United States Court of Appeals on January 3, 2004.

On January 15, 2004 United States Court of Appeals filed a court order granting Moody's motion for stay of issuance of mandate until March 29, 2004. A copy of this order appears at Appendix "D".

Jurisdiction of United States Supreme Court is proper pursuant to Title 28, USC, § 1254 (1).

Jurisdiction of United States Court of Appeals, 11th Circuit, is proper pursuant to Title 28, USCS, § 1291.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Statutory Provisions Involved -
Title 28, USC, § 1334 (a) (b) Bankruptcy cases and proceedings Appendix "F"

Title 28, USCS, § 2401(b) Time for commencing action against United States Appendix "Q"

Title 11, USC, § 322 (a) (d) Qualification of Trustee Appendix "Y"

Title 28, USCS, § 2675 (a) Disposition by federal agency as prerequisite; evidence Appendix "R"

Title 28 USCS, § 1346 (a) (b) United States as defendant Appendix "E"

Bankruptcy Rule 2002 (a) (5) Court Order of U.S. District Court dated February 3, 1995 Appendix "K"

Title 11, USC, § 1112 (b) Court Order of U.S. District Court dated February 3, 1995 Appendix "K"

Bankruptcy Rule 9006 Court Order U.S. District Court Dated February 3, 1995 Appendix "K"

Title 11, USC, § 554 Abandonment of property of the estate Appendix "L"

STATEMENT OF THE CASE

1. May 14, 1993 - John William Moody (Moody) filed a voluntary petition for bankruptcy under provisions of Chapter 11, Title 11, USC, (Case no. 93-2251-BKC-3P1).
2. May 5, 1994 - United States Trustee filed in U.S. Bankruptcy Court Objection of U.S. Trustee to Confirmation of Debtor's Plan of Reorganization in which U.S. Trustee requested that Moody's case be converted to Chapter 7.
3. May 12, 1994 - U.S. Bankruptcy Court issued a court order converting John William Moody's bankruptcy case from Chapter 11 to Chapter 7 and appointing a Chapter 7 Trustee. The case was converted against Moody's will and over his objection and with only 5 days notice instead of 20 days as required by Federal Law. A copy of the court order appears at Appendix "J".
4. June 2, 1994 - Moody filed NOTICE OF APPEAL in U.S. Bankruptcy Court appealing the order of Bankruptcy Court - ORDER CONVERTING CASE TO CHAPTER 7 AND ESTABLISHING BAR DATES AND NOTICE BY THE CLERK OF MEETING OF CREDITORS AND APPOINTMENT OF TRUSTEE, dated May 12, 1994.
5. February 3, 1995 - U.S. District Court Filed a court order Denying Moody's Appeal for reversal of order of Bankruptcy Court on conversion of his case. A copy of the court order of District Court appears at Appendix "K".
6. October 16, 1995 - Moody filed a motion in bankruptcy court for the court to convert Moody's case from Chapter 7 to Chapter 11.
7. November 2, 1995 - Moody filed a motion in bank-

ruptcy court for Estoppel and to schedule a hearing on dismissal of Trustee.

8. November 20, 1995 - Moody filed two affidavits in bankruptcy court -
   AFFIDAVIT IN SUPPORT OF MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 11.
   AFFIDAVIT AS TO ACTIVITY OF CHAPTER 7 TRUSTEE IN THIS CASE DURING 18 MONTH PERIOD MAY 12, 1994 TO NOVEMBER 12, 1995.
9. November 29, 1995 - U.S. Bankruptcy Court issued two court orders -
   ORDER DENYING MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 11.
   ORDER DENYING MOTION FOR ESTOPPEL AND TO DISMISS CHAPTER 7 TRUSTEE.
10. May 18, 1998 - U.S. Bankruptcy Court issued a court order approving trustee final report and closing the bankruptcy estate of John William Moody. A copy of the order appears at Appendix "I".

    At the time of closing the estate all property of the estate not abandoned by the court or administered by the trustee is abandoned to the debtor. The four causes of action which were assets of the estate during pendency of Moody's bankruptcy accrued to Moody at the time the estate was closed on May 18, 1998.
    TITLE 11, USC
    § 554 Abandonment of property of the estate
    (c) Unless the court orders otherwise, any property scheduled under § 521 (1) of this title not otherwise administered at the time of closing of a case is abandoned to the debtor and administered for purposes of § 350 of this title. See Appendix "L".
11. March 13, 2000 - Moody filed MOTION FOR COURT TO PROCEED ON BOND OF CHAPTER 7

TRUSTEE in U.S. Bankruptcy Court.

12. March 14, 2000 - U.S. Bankruptcy Court issued a Court Order - ORDER DENYING MOTION FOR COURT TO PROCEED ON BOND OF CHAPTER 7 TRUSTEE which appears at Appendix "M".
13. March 20, 2000 - Moody filed in U.S. Bankruptcy Court - MOTION FOR COURT TO REOPEN BANKRUPTCY CASE AND TO RECONSIDER ORDER OF BANKRUPTCY COURT dated March 14, 2000.
14. March 22, 2000 - U.S. Bankruptcy Court issued a Court Order - ORDER ON MOTION TO REOPEN CASE - DENIED. A copy of this Court Order appears at Appendix "N".
15. June 27, 2001 - Moody filed a claim with the United States Department of Justice, Office of U.S. Trustee, Suite 620, 135 West Central Boulevard, Orlando, Florida 32801 in the specific amount of $160,278.37.
    TITLE 28, USCS
    § 2401 Time for commencing action against United States

    (b) a [A] tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal Agency within two years after such claim accrues... See Appendix "Q".

    The relevant part of title 28, USCS, § 2675 (a) is quoted below -

    "... The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section..." A copy of this quote appears at Appendix "R".
16. After more than six months had passed since Moody filed a claim with U.S. Trustee, in compliance with

requirements of Federal Tort Claims Act, on January 29, 2002 Moody filed a Complaint for Award of Damages in United States District Court for the Middle District of Florida, Jacksonville Division.

17. April 8, 2002 - United States of America filed a Motion to Dismiss Plaintiff's Complaint in District Court.
18. July 29, 2002 - Moody filed in District Court MOTION FOR SUMMARY FINAL JUDGMENT, with affidavits, to be granted as a matter of law.
19. July 29, 2002 - U.S. District Court filed Summary Judgment Notice and sent a copy to plaintiff. A copy of the notice appears at Appendix "S'.
20. February 10, 2003 - United States District Court issued a court order GRANTING defendant's motion to dismiss plaintiff's complaint.

This court order is clearly erroneous. There is an erroneous view of the law and the facts in the instant case.

The case at bar is simply a lawsuit filed by a citizen, under Federal Tort Claims Act, against the United States of America for torts which occurred because of conduct of employees of Federal Government of U.S. Pursuant to Title 28, USC, § 1346 (b) District Court has exclusive jurisdiction over the case at bar.

TITLE 28, USCS

§ 1346 United States as defendant

"(b) Subject to the provisions of Chapter 171 of this Title [28 USCS, §§ 2671 et seq.], the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by

the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." The above appears at Appendix "E".

There was no reason for District Court to turn to case law to determine whether or not District Court had jurisdiction over subject matter in this case because under existing Federal Statutes District Court has exclusive jurisdiction over the instant case as stated above.

REASONS FOR GRANTING THE WRIT

1. The decision by United States District Court to dismiss Moody's lawsuit against United States of America is clearly erroneous and is based on an erroneous view of the law and the facts.

The United States Court of Appeals, 11th Circuit, affirmed the decision of District Court and in so doing sanctioned the erroneous view of the law and the facts by District Court.

Judge Adams stated, in his court order, that he must dismiss Moody's lawsuit for two reasons -

a. U.S. District Court finds that it does not have subject matter jurisdiction over plaintiff's cause of action.
b. Plaintiff's FTCA action is time-barred.

The following quote is from Court Order of District Court dated February 10, 2003 which appears at Appendix "B".

"First, the Eleventh Circuit has held, relying on a long line of case law, that a debtor must first obtain leave of the bankruptcy court before initiating a tort action in district

court against the trustee or other officer appointed by the bankruptcy court, for acts done in the trustee's official capacity. See Carter v Rodgers, 220 F.3d 1249, 1252 (11th Cir. 2000). Plaintiff has failed to obtain that leave of the bankruptcy court; in fact, he never asked. Absent that leave, the Court finds that it does not have subject matter jurisdiction over Plaintiff's cause of action. Id at 1253."

When Judge Adams turned to Case Law and based his decision that he is without subject matter jurisdiction, in the instant case , on Carter v Rodgers he erred in his selection of a case on which to base his decision and also erred in the facts stated in his court order.

The relevant part of Carter v Rodgers, which appears at Appendix "V" is quoted below -

"The Court of Appeals, Hull, Circuit Judge, held, as a matter of first impression, that: (1) debtor must first obtain leave of the bankruptcy court before initiating an action in district court when that action is against the trustee or other officer appointed by bankruptcy court, for acts done in the actor's official capacity;..."

In applying case law it is necessary to turn to the Doctrine of Stare Decisis in order to determine if the case under consideration is stare decisis with the case which has already been decided.

From Black's Law Dictionary (7th Ed.) a definition of stare decisis is quoted below -

"stare decisis [Latin "to stand by things decided"] The doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation. See PRECEDENT; NON QUIETA MOVERE. Cf. RES JUDICATA; LAW OF THE CASE."

The above definition appears at Appendix "X".

"The doctrine of "stare decisis" simply declares that

for sake of certainty, a conclusion reached in one case should be applied to those which follow if facts are substantially the same, even though parties may be different. In re Burtt's Estate, 44 A. 2d 670, 677, 353 Pa. 217."

The above citation appears at Appendix "T".

"Nothing can be 'stare decisis' which was not actually considered and determined. In re Brolasky's Estate, 153 A. 739, 741, 302 Pa. 439." Appendix "U".

From the foregoing it is clear that the facts in the instant case and the facts in the case which has already been decided must be substantially the same and if the facts are different in the two cases then the case under consideration is not stare decisis with the decided case and if a decision is reached by comparing different facts that decision is clearly erroneous.

For the case at bar to be stare decisis with Carter v Rodgers three requisite elements must be present -

a. The plaintiff must be a debtor which means that the bankruptcy estate must be open and pending because a person is only a debtor during pendency of bankruptcy. In Carter v Rodgers, Carter was a debtor when he filed suit in district court and in the case at bar Moody was not a debtor when he commenced action under FTCA. The facts are different.

b. Action must be against a Trustee, Receiver or other officer appointed or approved by bankruptcy court for acts done in actor's official capacity. In Carter v Rodgers action is against a former Chapter 7 Trustee and Antiques Dealer. In case at bar action is against United States of America. The facts are different.

c. Bankruptcy estate must be in process of being administered at time action is commenced in District Court. In Carter v Rodgers bankruptcy

estate was being administered when Carter filed action in district court. In case at bar Moody's bankruptcy estate had been closed more than two years when Moody commenced action under FTCA and administration of Moody's bankruptcy estate was Res Judicata. See Appendix "A-1". The facts are different.

From the foregoing it is clear that none of the three requisite elements from Carter v Rodgers are present in the case at bar and any decision that is reached by comparing the two cases is clearly erroneous.

Since Appellate Court affirmed and sanctioned the decision of District Court in the instant case this decision of Appellate Court is in conflict with a previous decision of this Appellate Court in Carter v Rodgers, 220F 3d 1249 (11th Cir. 2000). In Carter v Rodgers the Appellate court ruled, based on the facts in that case, that district court did not have subject matter jurisdiction because Carter had failed to obtain leave of bankruptcy court before bringing suit in district court. This decision was reached by comparing Carter v Rodgers with cases covered by Barton Doctrine in which facts were substantially the same as in Carter v Rodgers.

In the case at bar this Appellate Court ruled that District Court is without subject matter jurisdiction even though the facts in instant case and Carter v Rodgers are different.

There is no legal basis for reaching a decision based on a comparison of the instant case with Carter v Rodgers because the Doctrine of Stare Decisis and Barton Doctrine require that the facts in the case under consideration and the previously decided case be substantially the same; hence this decision is in conflict with a previous decision of this Appellate Court and clearly erroneous.

The decision of Appellate Court to base a decision on

two cases which are not similar and in which the essential facts in the two cases are different is a radical departure from the accepted and usual course of Judicial Proceedings and is contrary to the Doctrine of Stare Decisis and the Barton Doctrine.

The matter of whether or not District Court has subject matter jurisdiction in the case at bar hinges on one issue and that issue is whether or not bankruptcy court has jurisdiction in the instant case.

Bankruptcy Court may possess jurisdiction over an action in district court by virtue of any one of three conditions. The case arises under the bankruptcy code. The case arises in or is related to a case under the code.

"A proceeding is within the bankruptcy jurisdiction, defined by 28 U.S.C. § 1334 (b), if it "arises under" the Bankruptcy Code or "arises in" or is "related to" a case under the Code." The above quote is from Carter v Rodgers which appears at Appendix "V".

Since Moody's FTCA action was commenced more than two years after his bankruptcy estate was closed his FTCA action did not arise under bankruptcy code nor did it arise in a case under the bankruptcy code. This eliminates the first two possibilities of bankruptcy court having jurisdiction in the case at bar and leaves but one possibility to be considered and that is whether or not Moody's civil action in district court is related to a case under bankruptcy code. The following quote is from Carter v Rodgers which appears at Appendix "V".

"We have stated, "The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of the proceeding could conceivably have an effect on the estate being administered in bankruptcy." " Miller v Kemira, Inc. (In re Lemco Gypsum, Inc.), 910 F.2d 784, 788 (11th Cir. 1990).

"For federal bankruptcy jurisdiction to exist, case must at minimum "relate to" case under Title 11. 28 U.S.C.A. § 1334 (b)." In re Boone 52f 3d 958 (11th Cir. 1995). The above appears at Appendix "G".

"Test for whether matter is "related to" bankruptcy, within meaning of jurisdictional statute, is whether outcome of proceeding could conceivably have any effect on estate being administered in bankruptcy. 28 U.S.C.A. § 1334." Matter of Wood 825F 2d 90 (5th Cir. 1987). The above appears at Appendix "H".

From the foregoing it is clear that a civil proceeding is related to Bankruptcy only if the outcome of the proceeding could effect "the estate being administered" (Moody's emphasis) in bankruptcy.

Since Moody's bankruptcy estate had been closed more than two years when Moody commenced action under FTCA and administration of Moody's former bankruptcy estate is Res Judicata (See Appendix "A-1") there is no conceivable way that administration of the former bankruptcy estate, which no longer exists, could be affected by this FTCA action.

Based on the facts and the law which have been presented herein it has been proven conclusively that bankruptcy court is without jurisdiction in the case at bar and it logically follows that since bankruptcy court is without jurisdiction it is not necessary to apply to the bankruptcy court for leave to prosecute this action in district court.

There can be no doubt that United States District Court has exclusive jurisdiction over the case at bar pursuant to Title 28, USCS, § 1346 (b).

The following quote from court order of District Court dated February 10, 2003 is quoted below -

"Assuming arguendo that Plaintiff had obtained leave of the bankruptcy court to pursue this tort action against the U.S. Trustee and the Chapter 7 Trustee, then the

Court would find that this FTCA action is time-barred. Congress has specified under 28 U.S.C., § 2401 (b) a statute of limitations for bringing a tort claim against the United States. 28 U.S.C. § 2401 (b) states:

[a] tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal Agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

In examining each of the tortious acts of which Plaintiff complains, it becomes clear that all the acts occurred more than two years before Plaintiff presented the claims to the appropriate Federal Agency."

From the foregoing it is clear that Judge Adams measures the Statute of Limitations from the date a tort occurred and not from the date the tort accrued, as stated in the law, which is an erroneous view of the law; however there is no point in repeating Appellant's arguments on this issue and other issues which have already been presented in Appellant's brief and reply brief. There is one over-riding issue which proves conclusively that Appellant's FTCA was timely commenced.

For many years Moody believed there was a $300,000 bond by Fidelity and Deposit Co. of Maryland to assure the faithful performance of Trustee and to indemnify the estate for any loss which might be sustained by estate as a result of misfeasance or malfeasance of Trustee.

The following quote is from Court Order of May 12, 1994 converting Moody's case to Chapter 7.

2. "The U.S. Trustee has appointed Valerie Hall Manuel, whose address is P.O. Box 1258, Jacksonville, FL 32201, as the Chapter 7 Trustee and bond is fixed at

$300,000.00 by Fidelity and Deposit Company of Maryland."

The court order from which the above was copied appears at Appendix "J".

The statement in the court order that there was a $300,000.00 bond is a material misrepresentation of fact by United States Bankruptcy Court.

Court records show that the bond had been waived by United States Trustee. Moody was not notified that the bond had been waived. The following quote is from docket of Moody's bankruptcy case.

Date	No	Entry
06/02/94	90	Notice of appointment of Trustee and Waiver of Bond [EOD 06/02/94] [RB]

Docket appears as Appendix "O".

Moody believed that the statement in the court order about the bond was true and he acted in good faith and to his detriment when he filed a motion in U.S. Bankruptcy Court for court to proceed on Trustee's Bond.

TITLE 11, USC, § 322 Qualification of Trustee

(d) "A proceeding on a trustee's bond may not be commenced after two years after the date on which such trustee was discharged." The above quote appears at Appendix "Y".

March 13, 2000 Moody filed, within 2 years of date his bankruptcy estate was closed and trustee discharged, MOTION FOR COURT TO PROCEED ON BOND OF CHAPTER 7 TRUSTEE in U.S. Bankruptcy Court.

March 14, 2000 U.S. Bankruptcy Court issued a Court Order - ORDER DENYING MOTION FOR COURT TO PROCEED ON BOND OF CHAPTER 7 TRUSTEE which appears at Appendix "M".

March 20, 2000 Moody filed in U.S. Bankruptcy Court - MOTION FOR COURT TO REOPEN BANK-

RUPTCY CASE AND TO RECONSIDER ORDER OF BANKRUPTCY COURT dated March 14, 2000.

March 22, 2000 U.S. Bankruptcy Court issued a Court Order - ORDER ON MOTION TO REOPEN CASE - DENIED. A copy of the court order appears at Appendix "N".

It is immaterial why Judge Funk refused to reopen Moody's bankruptcy estate because even if he had reopened the estate he could not proceed on a bond which did not exist.

The court order of U.S. Bankruptcy Court dated March 22, 2000 (Appendix "N") which denied Moody's motion to reopen the estate for purpose of proceeding on Trustee's bond was final disposition of the matter of Trustee's bond by bankruptcy court without ruling on the merits of the case.

The two year statute of limitations for commencing a case under Federal Tort Claims Act was tolled by the Doctrine of Estoppel by representation. Moody believed there was a $300,000.00 bond as stated in bankruptcy court's court order of May 12, 1994 and acted in good faith when he filed a motion in bankruptcy court for court to proceed on Trustee's bond.

BLACK'S LAW DICTIONARY

estoppel by representation. "An estoppel that arises when one makes a statement or admission that induces another person to believe something and that results in that person's reasonable and detrimental reliance on the belief; esp., equitable estoppel." Appears at Appendix "P".

The two year statute of limitations for commencing a case under Federal Tort Claims Act began to run anew on March 22, 2000 when U.S. Bankruptcy Court denied Moody's motion to reopen bankruptcy estate.

Commencement of a case under Federal Tort Claims Act on or before March 22, 2002 would be timely.

TITLE 28, USCS

§ 2401 Time for commencing action against United States

(b) "a [A] tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal Agency within two years after such claim accrues..." A copy of the above appears at Appendix "Q".

June 27, 2001 Moody filed a claim with United States Department of Justice, Office of U.S. Trustee, Suite 620, 135 West Central Boulevard, Orlando, Florida 32801 in the specific amount of $160,278.37.

TITLE 28, USCS

§ 2675 Disposition by federal agency as prerequisite; evidence

(a) "...The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section..." A copy of the above appears at Appendix "R".

After more than six months had passed since Moody filed a claim with U.S. Trustee, in compliance with requirements of Federal Tort Claims Act, on January 29, 2002 Moody filed a Complaint for Award of Damages in United States District Court for the Middle District of Florida, Jacksonville Division.

This concludes Moody's first reason why the writ should be granted. It has been conclusively proven that bankruptcy court is without jurisdiction in the case at bar and District Court has exclusive jurisdiction over instant case pursuant to Title 28, USCS, § 1346 (b) (See

Appendix "E") and it has been proven that Plaintiff's FTCA action was timely commenced in compliance with Federal law.

2. At a hearing, which was scheduled to rule on Confirmation of Debtor's Plan of Reorganization, in U.S. Bankruptcy Court on May 10, 1994 (court order dated May 12, 1994) the bankruptcy court committed a reversible error which was never properly or legally dealt with by District Court or 11th Circuit Court of Appeals. On May 10, 1994 at a hearing in bankruptcy court on Confirmation of Debtor's Plan of Reorganization Moody's bankruptcy case was converted from Chapter 11 to Chapter 7 with only five days notice instead of twenty days notice as required by Federal Law.

The following findings of fact and conclusions of law are taken from Court Order of District Court dated February 3, 1995 which appears at Appendix "K". FINDINGS OF FACT -

a. "Thus, Plaintiff was not given notice that conversion of the case would be brought up at the May 10, 1994, hearing until approximately May 5, 1994. No mention of conversion was made prior to the Objection of United States Trustee to Confirmation of Debtor's Plan of Reorganization."
b. "However, no motion to reduce the notice period had been made and no exigent circumstances appear to have existed to support a reduction in time."
c. "In the instant case no unusual circumstances were presented as justifying the shortened notice period. Further, the Bankruptcy Court did not even acknowledge that the notice period was shortened and gave no reasons for such a shortening."
d. "Thus, the Court finds that the Bankruptcy Court erred when it failed to ensure that Debtor was given twenty days notice as required by Rule 2002 (a) (5)."

CONCLUSIONS OF LAW -

a. "The Bankruptcy Court converted this case from a Chapter 11 proceeding to a Chapter 7 proceeding pursuant to 11 U.S.C. § 1112 (b). 11 U.S.C. § 1112 (b) states that in pertinent part that "[O]n request of a party in interest or the United States Trustee or bankruptcy administrator, and after notice and a hearing, the court may convert a case under this chapter to a case under Chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate."

b. "Section 1112 (b) permits the court to convert a Chapter 11 proceeding to a Chapter 7 proceeding only after notice and a hearing. Bankruptcy Rule 2002 (a) (5) provides for a 20-day period of notice of a hearing to convert. Bankruptcy Rule 2002 (a) (5) states in pertinent part that "[t]he clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 20 days notice by mail of... in a chapter 11 reorganization case... the hearing on... the conversion of the case to another chapter[.]""

c. "The twenty-day period in Rule 2002 (a) (5) may only be shortened for cause shown. See 8 HON R. GLEN AYERS ET AL, COLLIER ON BANKRUPTCY § 2002.04 (e), at 2002-31 (Lawrence P. King et al. eds. 1994) (citing In re Mandalay Shores Co-Op Housing Ass'n. Inc., 63 B.R. 842, 852 (N.D. Ill. 1986); in re Hill Top St. Corp., 42 B.R. 517, 520 (Bankr. D. Mass. 1984)); Bankruptcy Rule 9006 (c) (1)."

d. "The flexibility written into Bankruptcy Rule 9006 to reduce the time for notice should be sparingly invoked and may be invoked only for cause shown. See In re Sandra Cotton, Inc., 65 B.R. 153, 156

(W.D.N.Y. 1986)."

e. "Administrative convenience does not justify an abbreviated notice. See id."

The following quote is from Court Order of District Court dated February 3, 1995 -

"Nevertheless, the Court fails to find any violation of Debtor's rights which justify reversing the Bankruptcy Court's determination or which justify remanding the case for further hearings. The Court finds that there was a very strong case in support of converting the action to Chapter 7. The Court finds that the improperly shortened notice was harmless error. See Bankruptcy Rule 9005."

Judge Schlesinger erred when he ruled that error of bankruptcy court in shortening notice period from 20-days to 5 days was harmless error and not a reversible error because his decision is contrary to the facts and the law presented in his own court order of February 3, 1995 and there is no evidentiary support in his court order for his opinion that shortened notice period was harmless error.

Two times in his court order Judge Schlesinger stated that a notice period may be shortened only for cause shown. See following 2 quotes from said court order -

"The twenty-day period in Rule 2002 (a) (5) may only be shortened for cause shown."

"The flexibility written into Bankruptcy Rule 9006 to reduce the time for notice should be sparingly invoked and may be invoked only for cause shown."

Findings of fact from said court order show that no cause was shown for shortened notice period.

The following two quotes are from Court Order of February 3, 1995 -

"However, no motion to reduce the notice period had been made and no exigent circumstances appear to have existed to support a reduction in time."
"In the instant case no unusual circumstances were presented as justifying the shortened notice period. Further, the Bankruptcy Court did not even acknowledge that the notice period was shortened and gave no reason for such a shortening."

From the foregoing it is clear that, pursuant to the law, a notice period may be shortened only for cause shown and no cause was shown in the instant case which justified the shortened notice period; therefore Judge Schlesinger was bound by the law, based on the facts presented in his own court order to grant Moody's appeal and reverse the Court Order of lower tribunal which converted Moody's case to Chapter 7.

The decision of District Court which denied Moody's appeal was affirmed by U.S. Court of Appeals for the 11th Circuit and in so doing Appellate Court sanctioned the decision of District Court.

Even though the decision of District Court was affirmed by Appellate Court the Doctrine of Law of the Case is not applicable here because there is a legal principle involved here which is not sound. See quote below-

"The 'law of the case' doctrine is inapplicable where prior decision lays down a principle of law for future guidance which is unsound. Standard Oil Company of California v Johnson, 132 P.2d 910, 913, 56 Cal. App.2d 411." Above quote appears at Appendix "Z".

In his court order of February 3, 1995 Judge Schlesinger disregarded and over-ruled Federal Law when he based his decision to deny Moody's appeal on his own opinion and not on Federal Law.

In his opinion Judge Schlesinger stated "Nevertheless, the Court fails to find any violation of debtor's rights..." Plaintiff does not agree with this statement. Plaintiff had a legal right to be given 20-days notice that conversion of his case was going to be taken up at a hearing in bankruptcy court. Moody was never notified by bankruptcy court, as required by Federal Law, that conversion of his case to Chapter 7 was going to be taken up at a hearing on Confirmation of Debtor's Plan of Reorganization in bankruptcy court on May 10, 1994.

When Moody was not given the 20-day notice, as required by Federal law, he was deprived of time in which to prepare a defense against conversion of his case to Chapter 7. Moody was also denied the right of due process. One important element of due process is "fundamental fairness". It was not fair for bankruptcy court to schedule a hearing on Confirmation of Debtor's Plan of Reorganization and then devote the hearing to a hearing on conversion of Moody's bankruptcy case to Chapter 7 without the court even notifying Moody that conversion of his case to Chapter 7 was going to be taken up at the Confirmation hearing.

There can be no doubt that on May 10, 1994 U.S. Bankruptcy Court committed a reversible error when the court converted Moody's bankruptcy case to Chapter 7 without proper notice to Moody and other interested parties.

CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted,

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